

file



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

Application of the Town of Beloit for a Permit to
Construct a Public Boat Launching Facility to
Include Boat Ramp, Two Loading Piers, Dredging,
Riprap and Grading on the Rock River, Town of
Beloit, Rock County, Wisconsin

Case No.: 3-SC-97-3109
3-SC-97-3110
3-SC-97-3111
3-SC-97-3112

FINDINGS OF FACT, CONCLUSIONS OF LAW AND PERMITS

The Town of Beloit, 2871 South Afton Road, Beloit, Wisconsin 53511, applied to the Department of Natural Resources for a permit to grade in excess of 10,000 square feet on the bank of the Rock River to create a public boat launch facility. The proposed project also includes removal of bottom materials from the river, placement of a concrete boat ramp and placement of riprap along the shoreline for bank protection. The proposed project is located east of Walters Road in the Town of Beloit, Rock County in the NE 1/4 of the NW 1/4 of Section 11, Township 11 North, Range 12 East.

The Department of Natural Resources issued a Notice of Proposed Boat Ramp, Grading, Dredging and Riprap which stated that unless written objection was made within 30 days of publication of the Notice, the Department might issue a decision on the permit without a hearing. The Department did receive a timely objection from the Rock River First group.

On April 9, 1998, the Department filed a Request for Hearing with the Division of Hearings and Appeals. Pursuant to due notice, including publication, hearing was held at Beloit, Wisconsin on May 4, 1998. Jeffrey D. Boldt, administrative law judge (ALJ) presided.

In accordance with secs. 227.47 and 227.53(1), Stats., the PARTIES to this proceeding are certified as follows:

Town of Beloit, by

Kenneth Forbeck, Attorney
2715 Riverside
Beloit, WI 53511

Wisconsin Department of Natural Resources, by

Michael Cain, Attorney
P. O. Box 7921
Madison, WI 53707-7921

Rock River First, by

C. James Cheaole, Environmental Chairperson
4108 West Springcreek
Beloit, WI 53511

Robert Baller
P. O. Box 533
Beloit, WI 53511

James Van DeBogart
2530 Sunset
Beloit, WI 53511

Raymond Hadley
5035 N.W. Rotamer Road
Milton, WI 53563

FINDINGS OF FACT

1. The Town of Beloit, 2871 South Afton Road, Beloit, Wisconsin 53511, completed filing an application with the Department for permits under sec. 30.12, 30.19 and 30.20, Stats., to grade in excess of 10,000 square feet, dredge and place a structure on the bed of the Rock River, Town of Beloit, Rock County. The Department and the applicant have fulfilled all procedural requirements of secs. 30.12, 30.19 and 30.20, Stats.

2. The applicant owns real property located in the NE ¼ of the NW ¼ in Section 11, Township 11 North, Range 12 East, Rock County. The above-described property abuts the Rock River which is navigable in fact at the project site.

3. The applicant proposes to construct a public access boat launch, roadway and parking lot. This area of the Rock River is heavily used for boating, fishing and duck-hunting. The proposal involves construction of a new two-lane concrete boat ramp, including a concrete underwater ramp. Further, the applicant intends to place two six-foot wide ramp docks each accommodating four boat tie-ups. Both boat ramps will be accessible to people with physical disabilities.

4. The purpose is to provide a public access boat launch. The Town has applied for a Waterways Commission Financial Assistance Grant to assist in the project costs. The project site is the old town dump. The parcel site is between the Town of Beloit Waste Water Treatment Plant and DNR owned prairie lands 600 feet north of the project site. The DNR determined that natural resources enhancement of the site, as described above, would be in the public interest of the Rock River even though the maximum boat access standards set forth in sec. NR 1.91, Wis. Admin. Code would be exceeded. (Ex. 13) The DNR Area Water Management Specialist, Christopher DeRemer testified that the standards for granting the waiver were met, because the standards for granting the waiver were essentially the same as those for granting a sec. 30.12, Stats. permit.

5. The proposed structures will not materially obstruct existing navigation on the Rock River and will not be detrimental to the public interest upon compliance with the conditions of this permit. The Town is a municipality and intends to make the facilities open to the public. No overnight moorings of boats are anticipated. There was no dispute that the proposed docking facilities constitute a "reasonable use" of this riparian parcel. The applicant is financially capable of constructing, maintaining, monitoring or removing the structures if it should be found in the public interest to do so.

6. The proposed project will not have a significant detrimental impact on fish or wildlife habitat. Mr. Hadley testified credibly that snapping turtles make use of the area some 75 yards south of the proposed project site. Further, bald eagles make regular use of the area for migration and roost within several hundred yards of the project site. Finally, the area is well populated by tundra swans during migration periods.

The DNR did not dispute any of Mr. Hadley's observations with respect to wildlife making use of the area. However, the Department experts did not anticipate any significant impacts to fish or wildlife as a result of construction of the boat ramp and docking facilities. Mr. DeRemer noted that he knew of no bald eagle nests proximate to the project site. Further, tundra swans and other migratory water fowl make use of the area in the spring and fall, when boating activity is light. A clear preponderance of the credible evidence, including all of the expert testimony, supports a finding that there would be no significant detrimental impact on wildlife if the project is constructed according to the terms of the permits set forth below.

Mr. Don Bush, Senior Fish Biologist, testified that he anticipated no adverse impacts to fisheries as a result of construction of the proposed project. Bush noted further that riprap would be useful to small-mouth bass in the area.

7. The proposed structures will not reduce the effective flood flow capacity of the Rock River.

8. The site of the proposed project is the old town dump. Because the project site is south of the known footprint of landfill and an existing bulkhead line, the proposal does not anticipate disturbing solid waste at site during construction. However, in the event that any unexpected solid waste is encountered, the Department has required that any excavated waste be

taken to a licensed sanitary landfill for disposal. (Ex. 7) The DNR Regional Waste Team granted the project an exemption to the prohibition set forth in NR 506, Wis. Admin. Code subject to compliance with special conditions. In addition to the provision relating to disposal, the exemption required that groundwater monitoring wells at the landfill be inspected and all damaged wells properly abandoned; and that positive surface water drainage be maintained along the roadway and parking lot. (Id.) There was no factual dispute in the record as to the adequacy of these measures to protect the river.

9. The proposed structures will not adversely affect water quality nor will they increase water pollution in the Rock River. The structures will not cause environmental pollution as defined in sec. 281.01(10), Stats., if the structures are built and maintained in accordance with this permit and with the terms and conditions of exemption to sec. NR 506.085, Wis. Admin. Code. Mr. DeRemer provided undisputed expert testimony that the project would have no detrimental impact on water quality, so long as erosion control measures were employed and minimal vegetation removed during project construction and grading.

10. The proposed grading involves more than 10,000 square feet on the banks of the Rock River. The graded area includes creation of a 16-18 boat-vehicle space parking area and twenty-five car-truck only spaces. The grading plan includes the extensive use of siltation fences and the preservation of a vegetation buffer between the parking lot and the river. Under these circumstances, the grading will not be detrimental to public rights in the Rock River.

11. The proposed dredging would involve an area fifty feet long by 85 feet wide, and the channel would be maintained at a depth of three feet. DeRemer was persuasive that the dredging would have minimal impacts on the river, so long as areas dredged were backed with a silt curtain and dredge spoils shall be disposed of off-site.

12. Mr. Baller, an environmental scientist and concerned citizen, testified that he preferred to see natural vegetation used for erosion control rather than rock riprap. However, Mr. Baller acknowledged that placement of riprap would not have significant detrimental impacts to fish and game habitat. Mr. DeRemer testified that riprap has been an effective erosion control device that has little if any negative impacts to fish or game. Further, natural vegetation barriers were not yet commonly used sufficiently for the Department to specify how best to protect the shoreline from erosion. Under these circumstances, issuance of the permit for riprap is appropriate.

13. The Department of Natural Resources has complied with the procedural requirements of sec. 1.11, Stats., and Chapter NR 150, Wis. Admin. Code, regarding assessment of environmental impact.

DISCUSSION

Mr. Hadley made an impassioned plea against any development of the west bank of this stretch of the Rock River. He acknowledged that many of his concerns were related to

development in general rather than any assertion that the specifics of the project proposal did not meet statutory standards for issuance of the permits. Mr. Hadley's love for and knowledge of this stretch of the Rock River were evident from his testimony and the photographs he introduced at hearing. However, the issue before the ALJ does not involve land-use choices in general but the specific proposal of the Town to place a boat ramp and dock at the site. The objectors presented no expert testimony to dispute the consensus opinion of the DNR staff that the project would have minimal impacts on the waterway. Accordingly, the permits must be granted.

CONCLUSIONS OF LAW

1. The applicant is a riparian owner within the meaning of sec. 30.12, Stats.
2. The proposed facility described in the Findings of Fact constitute structures within the meaning of sec. 30.12, Stats.
3. The Division of Hearings and Appeals has authority under secs. 30.12 and 227.43(1)(b), Stats., and in accordance with the foregoing Findings of Fact, to issue a permit for the construction and maintenance of said structures subject to the conditions specified.
4. The "public rights and interest in" the Rock River within the meaning of sec. NR 1.91(6)(e), Wis. Admin. Code will not be detrimentally impacted by exceedance of the maximum public boating access standards so long as the project is constructed in accordance with conditions set forth below.
5. The proposed grading will not injure public rights or interest, including fish and game habitat, nor will it cause environmental pollution so long as the project is undertaken in accordance with the conditions set forth below.
6. The project is a type III action under sec. NR 150.03(8)(f)4, Wis. Admin. Code. Type III actions do not require the preparation of a formal environmental impact assessment.

PERMIT

AND THERE HEREBY DOES ISSUE AND IS GRANTED to the applicant, permits under secs. 30.12, 30.19, and 30.20, Stats., for the construction of structures, for grading, and for dredging as described in the foregoing Findings of Fact, subject, however, to the conditions that:

1. The authority herein granted can be amended or rescinded if the structures become a material obstruction to navigation or become detrimental to the public interest.
2. The permittee shall waive any objection to the free and unlimited inspection of the premises, site or facility at any time by any employee of the Department of Natural

Resources for the purpose of investigating the construction, operation and maintenance of the project.

3. A copy of this permit shall be kept at the site at all times during the construction of the structures.

4. The permit granted herein shall expire three years from the date of this decision, if the structures are not completed before then.

5. The permittee shall obtain any necessary authority needed under local zoning ordinances and form the U. S. Army Corps of Engineers.

6. The permittee shall notify the Water Management Specialist, Christopher DeRemer, not less than 5 working days before starting construction and again not more than 5 days after the project has been completed.

7. Any area disturbed during construction shall be seeded and mulched or riprapped as appropriate to prevent erosion and siltations.

8. There shall be no clear-cutting of trees in the area between the parking lot and the boat ramp, and every effort shall be made to maintain existing vegetation in said area.

9. All dredge spoils shall be disposed of off-site.

10. The applicant shall comply with all DNR standards with respect to the placement of riprap. *Only clean field stone shall be used for riprap.*

11. The provisions of the waiver of maximum boat access standards (Ex. 13) and the solid waste exemption (Ex. 7) are incorporated by reference into these permits.

12. The permittee shall undertake the grading pursuant to the plans submitted as Exhibit 6 at hearing. These plans shall employ best management practices, including the use of silt fencing as described in the plans.

13. Acceptance of this permit shall be deemed acceptance of all conditions herein.

This permit shall not be construed as authority for any work other than that specifically described in the Findings of Fact.

Dated at Madison, Wisconsin on June 3, 1998.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 267-2744

By: Jeffrey D. Boldt
JEFFREY D. BOLDT
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.